

BOARD OF ADJUSTMENT MINUTES

DECEMBER 1, 2021

The Board of Adjustment of the City of Norman, Cleveland County, Oklahoma, met in Regular Session in City Council Chambers of the Norman Municipal Complex, 201 West Gray Street, at 4:30 p.m., on Wednesday, December 1, 2021. Notice and agenda of said meeting were posted in the Municipal Building at the above address and at <https://www.normanok.gov/your-government/public-information/agendas-and-minutes> in excess of 24 hours prior to the beginning of the meeting.

Item No. 1, being:

CALL TO ORDER

Chairman Andrew Seamans called the meeting to order at 4:30 p.m.

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Item No. 2, being:

ROLL CALL

MEMBERS PRESENT

Brad Worster
Curtis McCarty
Patrick Schrank
James Howard
Andrew Seamans

MEMBERS ABSENT

None

A quorum was present.

STAFF PRESENT

Jane Hudson, Director, Planning & Community
Development
Lora Hoggatt, Planning Services Manager
Logan Hubble, Planner I
Anais Starr, Planner II
Roné Tromble, Admin. Tech. IV
Elisabeth Muckala, Asst. City Attorney
Rick Knighton, Asst. City Attorney

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Item No. 3, being:

APPROVAL OF MINUTES OF THE OCTOBER 27, 2021 REGULAR MEETING

Curtis McCarty moved to approve the minutes of the October 27, 2021 Regular Meeting as presented. Patrick Schrank seconded the motion. There being no further discussion, a vote was taken with the following result:

YEAS	Brad Worster, Curtis McCarty, Andrew Seamans, Patrick Schrank, James Howard
NAYS	None
ABSENT	None

The motion to approve the October 27, 2021 Board of Adjustment Regular Meeting Minutes as presented passed by a vote of 5-0.

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Item No. 4, being:

BOA-2122-8 – CHERYL CLAYTON, TRUSTEE OF CHERYL CLAYTON REVOCABLE TRUST, REQUESTS A SPECIAL EXCEPTION UNDER 22:441(7)(G) FOR A TWO-CAR CARPORT AND A VARIANCE UNDER 22:104 AND 22:421.1(3) OF APPROXIMATELY 8' TO THE 25' BUILDING LINE ALONG CLASSEN BOULEVARD FOR A NEW SHED FOR PROPERTY LOCATED AT 503 TULSA STREET.

ITEMS SUBMITTED FOR THE RECORD:

1. Staff Report
2. Location Map
3. Aerial Photo
4. Residential Carports Ordinance
5. Application with Attachments

PRESENTATION BY STAFF:

1. Logan Hubble reviewed the staff report, a copy of which is filed with the minutes.

PRESENTATION BY THE APPLICANT:

1. Cheryl Clayton, 503 Tulsa Street, the applicant – I have submitted this to the Historic Commission for approval last month, and it has been approved from that Commission. I think I've provided a pretty complete application, but I will be happy to answer any questions.

AUDIENCE PARTICIPATION:

None

DISCUSSION AND ACTION BY THE BOARD OF ADJUSTMENT:

James Howard moved to approve the Special Exception and Variance as requested in BOA-2122-8. Brad Worster seconded the motion.

There being no further discussion, a vote was taken with the following result:

YEAS	Brad Worster, Curtis McCarty, Andrew Seamans, Patrick Schrank, James Howard
NAYS	None
ABSENT	None

The motion, to approve the Special Exception and Variance as requested, passed by a vote of 5-0.

Mr. Seamans noted the 10-day appeal period before the decision is considered final.

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Item No. 5, being:

BOA-2122-9 – MICHAEL AND ROBYN TOWER REQUEST A SPECIAL EXCEPTION UNDER 22:441(7)(G) TO 22:431.10 TO ALLOW CONSTRUCTION OF A CARPORT AND A VARIANCE UNDER 22:422.5(3)(B) TO THE EAST SIDE YARD SETBACK FOR THE CARPORT FOR PROPERTY LOCATED AT 212 E. HUGHBERT STREET.

ITEMS SUBMITTED FOR THE RECORD:

1. Staff Report
2. Location Map
3. Aerial Photo
4. Residential Carports Ordinance
5. Application with Attachments

PRESENTATION BY STAFF:

1. Logan Hubble reviewed the staff report, a copy of which is filed with the minutes.

PRESENTATION BY THE APPLICANT:

1. Mike Tower, 212 E. Hughbert Street, the applicant – We're in the older part of town and you run into this a lot, where you have things that don't conform. The original platting was in the 1890s. They say the house was built in 1910 – not exactly correct. It was probably built 1892-1896, but moved to this site. The site is small. After two hail storms totaling one car and damaging another car twice, we thought it would be good to build a carport and just extend an existing roof out. The other thing you get into is we've got to support and the lot, similar to a lot of things in the older part of town, is the east 46' of 5 lots, so it's not even a 50' lot. They moved the house there probably in 1910. We put in a concrete driveway to replace the gravel driveway that was originally there, and it left about a foot and a half there that we could actually put posts in, so we needed to go for the variance on the side yard. Luckily we have an alley next to it so there's a little bit of additional land; it's not abutting another property. We would appreciate consideration on the carport and the variance.

AUDIENCE PARTICIPATION:

None

DISCUSSION AND ACTION BY THE BOARD OF ADJUSTMENT:

Brad Worster moved to approve the Special Exception and Variance as requested in BOA-2122-9. Curtis McCarty seconded the motion.

There being no further discussion, a vote was taken with the following result:

YEAS	Brad Worster, Curtis McCarty, Andrew Seamans, Patrick Schrank, James Howard
NAYS	None
ABSENT	None

The motion, to approve the Variance as requested, passed by a vote of 5-0.
Mr. Seamans noted the 10-day appeal period before the decision is considered final.

Item No. 6, being:

BOA-2122-7 – KEVIN EASLEY HAS FILED AN APPEAL OF THE DECISION OF THE HISTORIC DISTRICT COMMISSION ON THE GROUNDS THAT THE HISTORIC DISTRICT COMMISSION FAILED TO APPLY THE PROPER STANDARDS FOR PROPERTY LOCATED AT 549 S. LAHOMA AVENUE.

ITEMS SUBMITTED FOR THE RECORD:

1. Staff Report
2. Excerpt of Historic District Commission Minutes, October 4, 2021
3. Location Map
4. Application
5. City of Norman's Hearing Brief

PRESENTATION BY STAFF:

1. Rick Knighton suggested the applicant make the first presentation, since they have the burden of proof.

PRESENTATION BY THE APPLICANT:

1. Fred Buxton, representing the applicant – This is a long, tortured process. I was here two years ago today appealing a decision on two of the same windows we're appealing today. We're going to change one of the windows back to historic that we changed out originally. But I also wanted to keep the two in back, which are out of view of the street. Mr. Knighton accurately recites – because he remembers the long record better than I do, I think – that the original windows were wood, and I said they were aluminum in my application – I was wrong. The original windows were wood. But there's no evidence anywhere in the record that the original two windows in back were historic windows, and that's been an assumption all the way through this matter. We now know, because we went to the Historic District Commission and asked for an administrative bypass to replace about ten other historic windows that have rotted out. Three of the windows on the back side of the home were not even historic; they were wood, but they weren't historic, and that's some new evidence that has never been before the board or the Board of Adjustment before.

Mr. Seamans – What makes you think that they're not historic windows? Is it the time – the wood themselves, or something particular about the wood?

Mr. Buxton – When Anais came to inspect it – she inspected the home – she agreed with our expert that the windows in the back of the house, although they are wood, they were not original historic windows that had been replaced over the years. The other two windows we replaced without knowing about all the rules. We replaced them with aluminum windows and the assumption had always been that those two windows were historic, but there's no evidence of that in this long record. Mr. Knighton argues this board does not have jurisdiction. I, respectfully, disagree with him. The cases he cites talk about the District Court having jurisdiction; they do not talk about various boards and activities of city governments, and I'm going through the only appeal process I can that's available to me. So we would ask that the Historic District be reversed and let us keep the two windows.

Mr. McCarty – Reading through a lot of this, just to be clear – so your client replaced windows in a house in the historic district without permission.

Mr. Buxton – That's right. That's absolutely correct.

Mr. McCarty – And then found out he had to go through the Historic District Commission.

Mr. Buxton – We appealed to – I'll let you go ahead, but yes. We went through the Historic District Commission process. We appealed it to the District Court. The District Court found the ordinance was unconstitutional and tossed the ordinance out. We went to the Supreme Court. The Supreme Court reversed the District Court and found your ordinance was constitutional, and sent us back to the Board of Adjustment. We came before the Board of Adjustment two years ago. You denied our request at that time. We went back to the District Court and, in fact, are now back in the Oklahoma Supreme Court in that case, at this time.

Mr. McCarty – So your client is not willing to replace the windows back to the original condition?

Mr. Buxton – We don't know what the original condition was, but we're going through – we are replacing the window on the front side – it's the window that faces Boyd Street and, quite frankly, it looked terrible and it's not historic; we're going to put an historic window on Boyd Street.

Mr. McCarty – The person that originally replaced the windows doesn't know what kind of window was there when he removed it?

Mr. Buxton – The person who originally replaced the window – we know the one on Boyd Street was historic. I will tell you it was historic; all the other windows on that side of the house are historic, and we're going to replace it now. It's the two in back we don't know if they were historic, and the person who originally replaced the windows back in 2011 is now dead, so I can't ask him.

Mr. McCarty – And there's not any visual pictures of any type?

Mr. Buxton – Unfortunately, there are not. We didn't take any. I don't know if Mr. Knighton ever found any from the prior owners. But I've never seen one in all the years we've been doing this.

Mr. McCarty – And at this point he's not willing to change it? Your client is not willing to change it to a wood window of any type?

Mr. Buxton – Well, he will eventually if the courts require him to do so. I'll put it that way.

Mr. McCarty – But he is going to replace the one in the front?

Mr. Buxton – The one in front is going to be replaced.

Mr. McCarty – So that's not even in question at this point.

Mr. Buxton – Right. It's the two in the back. And we're also replacing all the other historic windows with historic windows around the rest of the house because they were found to be rotten. I mean, they had just rotted out at this point in time. But we went through the process correctly this time, because didn't know about it the first time.

Mr. McCarty – How long has your client owned the house?

Mr. Buxton – He bought it in 2011.

Mr. McCarty – He was not aware ...

Mr. Buxton – In May 2011 he bought it. He started his remodel two weeks later, and he wasn't aware of it.

Mr. McCarty – So it wasn't disclosed to him when he bought it it was in an historic district?

Mr. Buxton – It was in one of the disclosures, but it just never hit him. It didn't hit him. And in 2011, it was kind of difficult to find on a computer the guidelines. You couldn't get to them as easily as you can today.

Mr. Seamans – I think what he's asking is was it in the closing documents on the house – was it in those documents?

Mr. Buxton – One of the closing documents mentioned historic district. He just didn't understand what that meant. And he didn't understand there were guidelines.

Mr. Knighton – I have prepared for you a presentation with regard to staff's position with regard to this particular request, and I believe you all have a copy of it. If you'll look on page 2, that is actually a picture of 549 South Lahoma. That house is located on the corner of Lahoma and Boyd, and I want to correct something, or clarify something – in this context, because that house is on a corner lot, it actually, under our Historic District Guidelines, has two fronts – there's a front on Boyd Street, which would be the south side of the house. There's a front on Lahoma, which would be the front of the house as you see in this picture. The windows that we're talking about, if you'll look on page 3, is a diagram of what that house looks like and, actually, the numbering is the numbering that we used at trial in this case back, I believe, in 2018. So we're talking about windows number 4 and 5, and those would be on the north side of the house, and based on the fact that the west side is a front, those windows would actually be on the side, and not on the back. We're talking about windows 4 and 5. Window 4 is an atrium window. If you'll look on page 4 it says Window No. 4 is a protruding atrium window, and then Window No. 5, as you see there, is a double one-over-one aluminum window that was replaced back in 2012 when Mr. Easley purchased that house. If you look at page 5, Easley's position appears to be – in his application that was before the Historic District Commission, is that he would replace the picture window on the south side of the house. It was, originally, before it was replaced, a double one-over-one wood window. It was replaced with a picture window. He was offering to replace that window with a wood window as it was when he purchased it – double one-over-one – with the condition that by administrative bypass staff allow him to keep the windows on the north side as they are – aluminum. Again, number 4 is an atrium protruding window. Window 5 is a single, I believe, aluminum vinyl-clad window above a kitchen sink. One, the City's position is I don't think staff has the ability to approve those windows by administrative bypass. Again, administrative bypass generally means you're replacing in-kind. As we'll talk about here in a little bit, the testimony at trial in this case was windows 4 and 5 were wood windows when they were replaced. Mr. Easley testified that they were wood windows. We also had the prior owner, Mr. Sooter, testify and he also testified that those were wood windows when he moved out of the house. The complaint, or the application that's here today, again, part of the argument is that the Historic District Commission failed to apply the proper standards for replacing aluminum windows. Again, it was premised on what now is being characterized as a mistake, is that windows 4 and 5 were originally aluminum, and we now know, again, that they were wood windows. Again, we've had an admission from Mr. Easley's attorney. We also have, again, the undisputed testimony at trial from both Mr. Sooter and from Mr. Easley. That let's us move to page 6. The City staff's position in this case is kind of two-prong. First,

staff does not believe the Board of Adjustment has jurisdiction over these windows at this time. We also don't believe that the evidentiary record shows that those windows were aluminum and, therefore, offering to replace them – or offering to the City staff to approve those by administrative bypass would not be appropriate. Page 7 – we'll talk about the jurisdictional issue. These windows went before the Board of Adjustment back on December 4, 2019. At that time, the request was to simply allow all three of the windows – one on the south side – the picture window – and the two windows on the north side – 4 and 5 – to remain as they were. The Board of Adjustment denied that request. Under our ordinances, and under the State Statute with regard to Board of Adjustment, an aggrieved party has 10 days to file their appeal with the District Court, with the Municipal Clerk, and with the Clerk for the Board of Adjustment. In this case, the appeal was not filed until January 3 of 2020 – significantly more than 10 days after the Board's decision. The City moved to dismiss the appeal because it wasn't timely filed. The District Court granted the City's motion. Mr. Easley requested leave to amend to add some constitutional claims, but he never submitted to the Court a proposed amended petition, which would have allowed the Court and the parties to determine whether or not those constitutional claims were viable. Again, because I mentioned earlier, the first trial included constitutional claims. In the first trial, Mr. Easley argued that the City's entire historic district ordinance was unconstitutional. Again, as noted, the District Court ruled that it was unconstitutional. That was appealed, and the Appellate Court ultimately ruled that the City's Historic District ordinances and the Chautauqua Historic District designation ordinance were both constitutional. Again, the directive after that case was to go to the Board of Adjustment and, as we've talked about, we've done that. So Mr. Easley appealed the District Court's dismissal to the Oklahoma Supreme Court. That case was assigned to one of the Court of Civil Appeals, and the Court of Civil Appeals has affirmed Judge Tupper's dismissal of the appeal regarding the December 4, 2019 ruling of the Board of Adjustment. Mr. Easley has now petitioned the Oklahoma Supreme Court to take up that matter. That petition was filed on November 24, 2021, so about a week or so ago. The City's answer is due on December 9. Mr. Easley would have an opportunity to file a reply 10 days later, and ultimately the Supreme Court is either going to say yes, we're going to take up the matter and issue an opinion, or they're going to say no, we're not going to grant cert. Once that happens and the mandate is issued, the District Court's order will become final. And at that point in time, staff's position is that this Board would have jurisdiction, possibly, to consider what Mr. Easley is proposing with regard to windows 4 and 5. Mr. Buxton is correct there aren't any really cases that talk about what happens once an issue is appealed from a Board of Adjustment to District Court, but the cases with regard to lower tribunals, once they decide a matter and it's appealed to a higher tribunal, the lower tribunal loses jurisdiction to take action which is going to adversely affect the position of the parties. That concept would apply to this case, because we'd be litigating, potentially, two issues. I mean, if you take this up and you deny it, I guess Mr. Easley would have 10 days to go file another action in District Court about these windows, when the issue regarding these windows is also pending before the Oklahoma Supreme Court currently. Those are the types of issues that rule is meant to resolve, so that parties aren't potentially subject to litigating the same issue in multiple tribunals. Once an issue is appealed to the Appellate Court, the lower tribunal loses jurisdiction, and that is what has occurred in this particular

case, and staff's position, at a minimum, is this needs to be postponed until the Supreme Court issues a decision with regard to Mr. Easley's petition for cert. The other issue that we were raising, and I think that is a bit moot now, had to do with the issue of the administrative bypass. The assertion that those windows on the north side were aluminum – again, the City's position is the testimony at trial from Mr. Sooter and Mr. Easley was that those windows were both wood windows. Now, for the first time today, I have heard a concept that, well, they were wood windows but they were not historic. What's important about this case is this particular structure – there's the original structure; there's an add-on to the rear. If you go back to the original application, it was determined by the Historic District Officer that the rear part of the structure was not historic and, therefore, those windows were not historic and the replacement of them was approved by administrative bypass. We submitted a document to you which I would call the City's hearing brief, and it includes testimony from Mr. Sooter. It's Exhibit No. 1, and on page 514 when Mr. Sooter was being questioned about window 5, which is the window over the kitchen sink, his testimony was – he was asked what was Window No. 5 made out of and what was the composition of that window when you moved out? And his answer was it was made out of wood and it was one of the original windows that was in there. So we have testimony at least to window 5 from the prior owner that says it was one of the original windows that was in there. There's additional testimony and, unfortunately, since that issue wasn't raised, at least in any of the documentation I've seen, I have not really reviewed the transcript to determine if Mr. Sooter also testified as to whether window 4 was an original window, but they're right next to each other – they're in the same area of that structure. They don't appear to be part of the add-on that was to that structure at some later point in time. So I suspect the possibility exists that there's testimony from Mr. Sooter that also states that window 4 was one of the original windows in that house. But the City staff's position with regard to this particular application is, number 1, it should be postponed at least until the Supreme Court issues a ruling with regard to Mr. Easley's petition for cert and, should the Board of Adjustment decide to take up this issue, there is no basis for granting an appeal, because the appeal was premised on the argument that staff erred in not approving it by administrative bypass because it was an in-kind replacement and, again, the record does not support that factual assertion and there's no basis to argue that the staff erred for not approving the replacement of those windows by administrative bypass. If you have any questions, I'd be more than happy to answer them.

Mr. Worster – We kind of have two City positions here. How are we supposed to decide if we're supposed to be able to decide? You gave us a packet full of stuff that we've all sat here and read, so I've kind of decided, pending applicant's presentation, what I think on this. So I don't know how we vote on – if we can vote on it.

Mr. Knighton – I think staff's first position would be that you should postpone your vote because, again, it's potentially putting us in the position of having two cases filed about the same windows – about the same issue – one pending in District Court while one is pending in the Oklahoma Supreme Court, and the potential conflict that would create for those two particular courts reviewing the same issue. Obviously, the Oklahoma Supreme Court is superior to the District Court, and the Oklahoma Supreme Court's jurisdiction takes precedent over the District Court. The second argument was made in

the alternative, and that is alternatively, if the Board should decide that they don't believe it should be postponed, that it should be decided upon now, that there would be no basis for granting the appeal because staff didn't err. So the City's first position is it should be postponed.

Mr. Worster – We postpone it, or does the staff not have to be the applicant?

Mr. Knighton – I believe that you can postpone it.

Mr. Worster – Thank you. Very thorough.

Mr. Howard – In terms of the appeal, what is the expected timeframe of that?

Mr. Knighton – That's a good question. Petitions for cert – the issue is going to be whether the Court grants the petition or denies it. If the Court denies the petition, it will probably issue the mandate about 30 days later, and that will return the case to the District Court. The District Court will recognize the Court of Civil Appeals' decision dismissing the appeal from the December 4 Board of Adjustment hearing, and that will be the final order in that case. Should the Court grant the petition for cert, how long it takes for the Supreme Court to rule on stuff – there probably is an attorney that can probably give you a good idea – it's just whenever they get to it. It could be a week; it could be a month. I've literally had cases pending before the Oklahoma Supreme Court for multiple years. That's just really difficult for us to give you any sort of advice on or guidance on, because it's just when they get to it.

Mr. Howard – I have another question for staff. With regard to the potential of postponing, is there any requirements in our ordinance with regard to how long we can postpone? Are there any time limits to that?

Ms. Muckala – No, but as far as mechanisms go, though we're not bound by ordinance or law to Robert's Rules, we generally follow those, and the two procedural options for postponement – there's postpone indefinitely, which essentially disposes, and then there's postpone to a date certain. There's really no limit to the amount of postponements that can occur as a matter of procedure, but generally those are the two options. Now I don't know if I've ever seen a conditional postponement upon the happening of an event. I'm pretty sure that would be considered indefinite, not knowing when that event is going to occur.

Mr. Knighton – I would recommend, since we know at some point in time the Supreme Court is going to make a decision, and once they make a decision, whether it's to take the case and issue a ruling or to deny cert, they're going to issue a mandate and the mandate is going to return the case to the District Court. I would suggest postponing it until the mandate is issued in the currently pending litigation. That's about as certain of a date that I think that we can rely on without having Mr. Buxton come back here every X amount of days, when the possibility exists that the Court hasn't issued its mandate within that timeframe.

Mr. Buxton – May I have rebuttal?

Mr. Seamans – Yeah, go ahead.

Mr. Buxton – I didn't realize we were here on a – Ricky straightened me out on some things. I didn't realize we were here on a motion to postpone as well. I would like to

have a chance to look at Roger's Rules of Order and the City of Norman's ordinances to see if it's possible for you guys to grant a continuance. I'd like to have more than a few minutes. A couple other things, too. There's two fronts to a house on a corner. It's only logical there's two backs to a house on a corner. And the rules have changed over the years regarding the back of the house where this window is. My belief is the jurisdictional argument is best taken up in the District Court. You guys reject my appeal, that's fine. I'll appeal it, and we'll make these arguments to the District Court who is used to listening to these arguments. I recognize that this does not fall in your bailiwick every day. I'd like to just take it up now and let's fight the battle now instead of waiting. That's my position. Anybody have questions?

Mr. Howard – So your first statement was you want to postpone so you have time to review if we can postpone?

Mr. Buxton – If you're inclined to postpone, I would like time to at least look at the ordinances – give me a week and I'll file something with you all and come back next month. That would be my first – if what you're inclined to do is postpone, give me a chance to at least look at the ball.

Mr. Howard – Okay. So you're willing to come back.

Mr. Buxton – Yeah, I'm willing to come back. You try to save me trips to Norman, but I come down for football. I don't mind Norman.

Mr. McCarty – What you're asking is you would like to see it postponed just to next month to give you an opportunity to review if you think we have the power to postpone an item on an agenda?

Mr. Buxton – Then I would agree with a postponement, but I can't agree to it blind-sided.

Mr. Seamans – You had said that there are two fronts to the house and two backs to the house. Does the Historic Society review that side of the house as a rear yard?

Mr. Buxton – I've asked them to, but I do not believe they did.

Mr. Seamans – I don't think they do. I think it would have one back, one side, and two fronts.

DISCUSSION AND ACTION BY THE BOARD OF ADJUSTMENT:

James Howard moved to postpone BOA-2122-7 to the January 26, 2022 meeting. Patrick Shrank seconded the motion.

There being no further discussion, a vote was taken with the following result:

YEAS	Curtis McCarty, Patrick Schrank, James Howard, Andrew Seamans
NAYS	Brad Worster
ABSENT	None

The motion, to postpone BOA-2122-7, passed by a vote of 4-1.

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Item No. 7, being:

BOA-2122-10 – KOREY AND AUTUMN MCMAHON REQUEST A VARIANCE OF 13'9" (5'0" EXISTING AND 8'9" NEW) TO THE 25' FRONT YARD SETBACK FOR THE ADDITION OF A NEW PORCH FOR PROPERTY LOCATED AT 416 W. EUFAULA STREET.

ITEMS SUBMITTED FOR THE RECORD:

1. Staff Report
2. Location Map
3. Aerial Photo
4. Application with Attachments

PRESENTATION BY STAFF:

1. Logan Hubble reviewed the staff report, a copy of which is filed with the minutes.

PRESENTATION BY THE APPLICANT:

1. Mark Krittenbrink, representing the applicants – The owners came to me and they wanted to add a front porch. As it turns out, on the entire 400 block of West Eufaula, they are the only house that doesn't have a front porch; every house has a front porch. In fact, the Historic Commission encourages people to have front porches on their house, because it creates that house-to-street relationship. We have done a few projects where that's all we've done, is added a porch to the front of a house. So that seems easy enough – right? Theirs is an unusual house with a sloped roof and so we came up with this – that we had a hard time coming up with the design. You can see the addition – you can circle it there. And that mimics the slope of the existing house. Then there's an open arbor on the other side. So you can see it gives them a nice opportunity for a front porch. So we're thinking, okay, easy enough. I figure a 60-foot right-of-way to West Eufaula, so that's 30 feet, 25 feet – that puts the required front yard setback at 55 feet. We're at 60 feet, so I thought I just need an adjustment of like 3' to get an 8' porch on the front of the house. But it turns out, when I talked to Ken Danner, it's an 80-foot right-of-way on West Eufaula, and he said a lot of the east-west streets in Norman. So that encroaches back 40 feet plus 25 feet, so that meant the front yard setback would be 65 feet from the centerline of the street. Now, of all the houses on that street, there's not one that meets that. In fact, I brought this, because I thought it would be an easier opportunity. Here is Park. Here is Eufaula. Here's the centerline of the street. The red line represents the required front yard setback with an 80-foot right-of-way. All the houses in yellow, as you can see, are those houses that are existing that already encroach on that front yard setback. So, actually, 5 feet of this house already encroaches. Houses encroach from 5 to 15 feet. So what we're wanting to do is essentially add an 8 foot porch to the front of the existing house, which takes us out to 13 feet. So 5 feet – and I had to come over and Roné and I had to sit down and go over this – 5 feet of this encroachment already exists in the building, as do all these other houses that encroach. So we're asking for an 8-foot addition to that, which takes it out to the level of – this house at 424 Eufaula is the closest. My house on the corner, 428 Eufaula, is the next closest to the right-of-way, so I am matching that. So there's an established building line there on this street that we would match with the front porch. And it would be a front porch; it wouldn't be a building. We wouldn't encroach with a solid building, but just the

front porch.

Mr. Worster – This is in the Center City Form-Based Code district.

Mr. Krittenbrink – It is and I checked and this zoning will trump. Jane, do you want to address that?

Mr. Worster – I recognize it's not an addition over X number of percentage of square feet, so the new zoning doesn't apply, but there's a building front yard – required building line there, and I'm curious what that distance is in relation to the application.

Ms. Hudson – Yes, there is. However, because the addition that they're doing is less than 50%, this automatically goes back to the R-1 zoning district, so we don't look at that required build line. If you wanted to – we don't – I just want to give you this clarification. In the yellow, which is what the Center City Form-Based Code is for them, they actually have the opportunity, it states in there, that they can build to what the other houses are. And, as Mark said, that's what they're basically doing. But this is looking at R-1 zoning district.

Mr. Worster – I guess I was just looking for an easier point of reference versus the red line on the draft on the paper – if we had a set thing that was already set for the neighborhood, if this happened to fit in it, then that would be an easy thing. But we don't have – I didn't have – I was almost late today, but I didn't have the time to go look up what that required build line is. Is that at the property line in that area? I thought the single family home one was further back. And if it's 10 feet, then I think that's what they're asking for. But I don't remember what it is.

Ms. Hudson – I'm sorry, I didn't bring my Center City. There's a bold section, because I looked it up.

Mr. Worster – I think, overall, I like the idea you need a porch. I'm just trying to find a reference point that isn't somewhat arbitrary, without having a surveyor come down and shoot the line on exactly what all the neighbors are.

Mr. McCarty – That's what I was going to ask, Jane. Has the City looked at his presentation and pretty much agree that it's pretty accurate, because I'm sure you didn't survey every one of those properties.

Mr. Krittenbrink – I did a measurement from the curb. I pulled that up and then I verified the dimensions from the curb to the front-most part of each house and then added the 11 feet from the centerline of the street.

Ms. Hudson – The narrative in here says that new construction and redevelopment may construct at the setback of the existing structure or follow an existing setback on an adjacent/neighbor property in this district. So, as these redevelop, we will have varied

...

Mr. Worster – On a block-by-block basis, basically.

Ms. Hudson – Yeah.

Mr. McCarty – One last question. I see a window above the front porch. Is that just a fake window?

Mr. Krittenbrink – That's an existing window. That goes into my grandson's bedroom.

AUDIENCE PARTICIPATION:

None

DISCUSSION AND ACTION BY THE BOARD OF ADJUSTMENT:

Patrick Schrank moved to approve the Variance as requested in BOA-2122-10. Curtis McCarty seconded the motion.

There being no further discussion, a vote was taken with the following result:

YEAS	Brad Worster, Curtis McCarty, Patrick Schrank, James Howard, Andrew Seamans
NAYS	None
ABSENT	None

The motion, to approve the Variance as requested, passed by a vote of 5-0.

Mr. Seamans noted the 10-day appeal period before the decision is considered final.

* * *

Item No. 11, being:

BOA-2122-11 – JOHNSON & ASSOCIATES, ON BEHALF OF MELISSA'S HOUSE, L.L.C., REQUEST A VARIANCE OF APPROXIMATELY 13' TO THE REQUIRED 20' REAR YARD SETBACK TO ALLOW EXPANSION OF THE MAIN STRUCTURE FOR PROPERTY LOCATED AT 4334 W. ROBINSON STREET.

ITEMS SUBMITTED FOR THE RECORD:

1. Staff Report
2. Location Map
3. Aerial Photo
4. Plat
5. Application with Attachments

PRESENTATION BY STAFF:

1. Logan Hubble reviewed the staff report, a copy of which is filed with the minutes.

Mr. Worster – Is the current building occupied, or does it have an occupancy permit? It looks like it's still under construction.

Mr. Hubble – It did at one point quite a while back. They submitted a building permit for it to be added onto, but it was never completed. So it hasn't been inspected or anything. At this time, I wouldn't think anyone could live in there, but I'm not 100% sure about that.

Mr. Worster – So there isn't a pending occupancy permit on the construction that was done in 2019?

Mr. Hubble – I don't believe so.

Ms. Hudson – That's correct. There's not an occupancy pending. They haven't finished all their inspections on the previous permit. I'm sure this new applicant will be doing something different, but on the previous one, no.

Mr. Howard – With regard to the history of that property, the original permit for construction, in the plans that were submitted, was there a living space above the garage space? Because I've been by that property before and I recall seeing double doors up above and an occupiable space up above.

Ms. Hudson – I don't believe that there was. I didn't pull those, because, to be quite honest, that didn't have anything to do with this request, so we didn't pull any of those. The only reason I know about the fact that the inspections aren't completed on that is because we, just in general, have been talking about it. But I didn't look at the plans for that.

PRESENTATION BY THE APPLICANT:

1. Mark Zitzow, Johnson & Associates, representing the applicant, Ben and Katie Dickey with Melissa's House – Thank you all for taking the time this afternoon. As staff introduced, we are here to request a variance to the rear yard setback on this property. Everything else that is proposed with the current site plan meets all City of Norman requirements and regulations. So we were kind of getting into it before I came up here, but the background on this property: a previous owner purchased it in 2017. They filed a permit with the City of Norman. That permit is on the right. You can see it appears the

original intent was to be a very large garage. The structure is about 1,500 square feet, and there was going to be a driveway that exited out onto Loma Drive, presumably to park RVs or large recreational vehicles. The construction ultimately stalled, and then it was listed for sale in February of 2019. Our clients have purchased the property; they did so in July of 2021. Since about May they've been going through some site planning and conceptual architectural design to figure out how to best use this property. This is an aerial of the existing property. You can see that the structure – why we're here today – is on the north side. It is a detached approximately 1,500 square foot garage. There is another garage on the west side of the property – you can see where the driveway comes off of Robinson, where it looks like a large RV was parked. Again, our request is a variance to the 20 foot setback on the rear yard. The reason we're here is because we are seeking to attach the main structure to the existing garage that is there today. What's outlined in red is the proposed addition, which would be really the only physical change to the building footprint for this project. If that garage was not in existence, it's likely that the site would have been redesigned to meet all of the other codes and regulations. But it is there; it is a large 1,500 square foot structure, and we are seeking to use that as part of this project. Just quickly to run through the conditions: it's a large detached garage that was semi-constructed to accommodate the RVs that exists. There's a photo there. I did confirm – there's no stair structure within that garage. It doesn't appear that that second story was intended to be used that way – maybe as storage. Our client is not going to be using that second story. Inside it will be a one-story structure. It's peculiar that a lot like this that you would buy would have a 1,500 square foot unfinished structure. It's ultimately the size of a small house that exists today that is within the 20' rear yard setback. It's also a little bit unique that a residential lot like this would front on a major arterial road, and that it has a greater than normal front yard setback, which is part of the reason for our request and part of why this structure was built where it was. The home sits a little further back than typical. Again, it's peculiar that the residential platted lot of this size is oriented toward the major arterial in that it is not a significant size lot. If you look along West Robinson, on the left picture the house on the west is actually facing east. The house on the east side on the left picture is set back significantly from Robinson, and you can see that home also has two large existing structures that are accessory on their lot as well. The picture on the right, you can see homes that are along Robinson, but they're fronting east and west. So, again, it's a bit unique that this home was situated to front onto Robinson with the lot size that it had. You can see that home has a tennis court and a large pool and the lot is much larger. Condition 2 – we think this is unique because we're dealing with an existing and permanent unfinished building that was constructed after the main home. This project and this home were not constructed in tandem. The renovation occurred in tandem, but it was not the original constructed and designed home that was there so many years before our client purchased this property. We believe that the owner is being deprived of fully using the square footage on the property for their intended use. Condition 3 – our owner purchased this property with an existing detached garage that's in its present location. We think that's kind of the key piece here; the physical limits of the structure are not being changed – the existing rear yard setback is being maintained at that approximate 7' on the rear. Again, had the structure not been present, it's likely that the site would have been designed in accordance with the regulations. It just so happens

we're dealing with a 1,500 sq. ft. accessory structure that we're seeking to attach. Then Condition 4 – the vast majority of homes in this area, and through most communities in the Oklahoma City metro area, have front-facing garages that were designed cohesively into a structure. Detached garages are not as common today in construction. We think granting this variance to the existing conditions does not grant a special privilege to this property owner. It's allowing them to fully utilize the square footage that exists. We also believe that granting this variance will allow the property owner to make functional use of the existing square footage on the site and prevent any demo from occurring of the existing garage. Ultimately, other residents who have similar and unique factors such as this tract would have the right to apply to this body for similar consideration. Here's an image – the red line is what the 20' rear yard setback would be, and then you can see the blue line is where the existing building is. There's an existing sight-proof fence. There is vegetation on the property to our north that acts as additional screening. I think one thing to note, if this home had been oriented toward Loma, the garage would have been shifted further to the west, but that would have been a side yard and it still would have been permitted within 5' of that property line. The only physical change is that the two structures are going to be connected, which is what you see within that red box. The existing rear yard setback is maintained in its current state. The sight-proof screening and fencing exists and will be improved as part of this project. There are no windows proposed on the north side of that garage, so the condition will remain, except that the façade will be finished – right now there is no exterior cladding. Overall, the structure and site will be improved and completed. Originally there was a drive proposed on Loma was part of that previous building permit; there are no driveways proposed with this project. With that, there's a rendering of ultimately what the front façade will look like. Ben and Katie are happy to answer any questions, as am I, but we would ask for your approval. Thank you.

Mr. McCarty – I saw your overlay of the property as you presented there. It looks like there's eight bedrooms. You're converting all the garage space into bedrooms?

Mr. Zitzow – That is correct.

Mr. McCarty – How do you plan on entering the property and getting out of the property?

Mr. Zitzow – The property will be entered off of the drive – let me pull up the full ...

Mr. McCarty – It's not wide enough for a turn around in the driveway. Are you going to pull straight in and back out onto Robinson?

Mr. Ben Dickey – I can help with that. Jeff Blake, with Gunnerson Blake, is the design/build firm helping us. He has designed it to come in and there will be a little hammerhead. The staff will have two small spots there in the very back where they can park a vehicle. So they would turn in, and it would give them the opportunity to pull in and then they can come out forward to Robinson so that it's safer for them to pull out. We're going to encourage them to turn right, instead of turning left.

Mr. McCarty – So the intent of the use is going to be an 8-bedroom senior living facility. Is that what I understand?

Mr. Dickey – We want to convert it into a home to help assist senior citizens with activities of daily living.

AUDIENCE PARTICIPATION:

1. Mr. Phil Statham – I'm surprised by what I just heard in a number of ways. For one thing, your question about it being an 8-bedroom – the plans I saw from the City are 10 bedrooms downstairs; there are bedrooms upstairs also. There's a bathroom for each bedroom and there are common areas. The one that comes back against my property, because I border this entire – what they're calling the north end – that is the border I'm all the way across there with them. It was not originally intended, of course – that was to be a garage. It was allowed to be placed that close to my property because – I mean, it's right on me. It's not been occupied in the entire time that it's been rebuilt, so there's no complaints or anything because it has not been used. It has been under construction for a long time. The four bedrooms that are proposed to be put into this building that's 13' into the 20' restriction there – that red line – those bedrooms are the ones that – well, there are 4 bedrooms/4 bathrooms and that lounge, I think it's called, that are right outside of my house. The comment about the existing foliage – the existing foliage is only there because it was volunteer foliage that has come up along the fence line and I let it go in order to block the construction noise and all during this last four years. There's not a permanent thing there; they're all saplings that grew up – mulberries and undesirable trees; they won't be left on my side. I'm also surprised that they would kind of put it off on me to block the noise and sight and all that's coming because of their addition. I went to a number of elder care facilities and each of them has individual air conditioning for each room, and then they have larger for lounges or common area spaces. I'd like to point out, too, that even on this left side it is inside the setback, but all of those are now garages. There are two 18' wide garage doors there. When I went out to these facilities, I was surprised at how much they hummed with the sounds of the air conditioners running. They've also got special needs for generators, because you can't afford to have the power go down and not be able to provide help that these people need. But this whole left side that has 3 of those bedrooms is also garage space, as I was saying. He didn't intend to have air conditioned space in the part that is right up against my house at all; it was for RVs and things. He had several kids of different ages and he was planning to have lots of recreational vehicles and toys for them in there. There is a second story on this, like someone asked who had been by there and seen it, and there are bedrooms upstairs also. So there are 10 bedrooms that are patient or client bedrooms downstairs and there are also bedrooms upstairs. There is a bathroom for each of these client bedrooms, of course.

Mr. Seamans – I don't think the question is the number of bedrooms. Isn't it the setbacks? Did they say anything about the number of bedrooms? My understanding is you can have as many bedrooms as you like. I don't think their ask is based on the number of bedrooms.

Mr. Statham – And I'm not questioning that. All I'm saying is that he got permits to build this garage as a stand-alone garage, and that's why he was able to build it well into this area that you can't have occupied space. It's the conversion to that that's going to affect my property so much, because there's going to be a lot of noise. It's already, as a garage, I'm in the shadow of it – my bedrooms. I've got two 1 year old grandsons and a 4 year old grandson and I hope to be having them there a lot and having a play area

for us and us be able to hear the birds and things like that, and the facilities that I have seen – because I went and checked out as many as I could after – we didn't get very much time on this, by the way. I think you guys know. But I scrambled to find all I could about it, and they have all – I saw a 12' concrete block wall to block the noise and sight of one of their big Generacs. There's all kind of air conditioning equipment.

Mr. Seamans – You're concerned about sound. Is there anything else you're concerned about?

Mr. Statham – Oh, yes. Parking for sure. Access getting in and out of there. Loma – that's my street – is particularly narrow. It's 17', I believe, which is very unusual to start with. It's hard to get in and out of. The previous owner that lived there for the first 20 years I was there – he would have to make a charge to get out on Robinson. He would sometimes back out, which was crazy.

Mr. Seamans – Your concern is the parking and the drive.

Mr. Statham – The parking, the drive, the noise, the lighting. By the way, I saw a lot of fire hydrants around these places. The facilities I saw, they had 120' or so, at least, a minimum 120' of any residences near them. What I'm saying is basically I certainly didn't buy my house thinking that I would be sharing it with a facility with that many occupants and all. I'm also a little bit worried about the loading on all of the facilities, because that was a very old house – I mean it was built 50 years ago.

Mr. Seamans – Is your concern their electric bill?

Mr. Statham – No, it's not electricity, so much. It's sewage and water supply. You've got a toilet in each of these 10 bedrooms, plus you've got upstairs ones, and perhaps some common area ones that aren't just for the occupants. I'm worried about just stressing everything – whether when I flush my toilet I hope that goes down. I'm saying that house was built 50-60 years ago originally. And the way he did it, that's a cap over an existing house structure there.

Mr. Seamans – I let you run over a little bit. Is there anything else you have concerns about.

Mr. Statham – I appreciate it. I do want to just say that I don't intend to keep any of that foliage that is across there that they say would give a sound buffer or sight buffer. That's not it. And one point I saw a reference to the fencing that was relatively new – it's 20 years old and it's dilapidated all across between my property and that property. It was referenced in their write-up as a fairly new fence. I think it's going to have a lot of effect on me and on several neighbors right around us, some of whom are ...

Mr. Schrank – I've heard several of your concerns, and one of those being noise from the area. If it were a garage and any noise that came from that garage, that would not be an issue with you? Even if it was maybe perhaps a conditioned garage, which is

allowed, my understanding of the code. Or if there was a generator attached to that garage that serviced that garage, which would obviously be tested once a week or once a month. But those noises would not be an issue to you?

Mr. Statham – My concern is 24/7 use of facilities, more than it is some probably daylight hours, after hours garage stuff. There are other people that have garages, and that's way different than having four residents and four bathrooms and that right there by you.

Ms. Beth Muckala – Thank you for recognizing me. I just wanted to clarify something for the sake of further conversation, and it has to do with this slide that's right up here. We've referenced that blue line as being the new setback and I think it might benefit maybe the applicant to clarify – Mr. Zitzow. The application, as staff understands it, is just for the encroachment into that back setback as far as the width of the existing structure. It wouldn't stretch all the way along that property line; that's not what's in front of you. So there wouldn't be any further structures built on that other side. I just wanted to make sure that was clear for discussion purposes.

Mr. Zitzow – We will confirm that. There is no intent of any additional structures being built within the 20' rear yard setback. What we are asking approval for is only the length of the rear side of that garage be permitted within the 20' rear yard setback.

Mr. McCarty – But the use of it is being changed from garage to living.

Mr. Zitzow – I would ask the City Attorney to address that. The use is not in question. We are only seeking a variance to the setback.

Mr. McCarty – That's a great question. So, if you want to come up, I have some other questions just about the variance in general. So we have an ordinance in Norman, no more than 3. So how does this variance address that, because that's a zoning issue?

Ms. Muckala – This variance actually goes nowhere near that. It's two separate issues. The BOA is not empowered to address issues of use; that's set out very specifically within your authorities. So it is just a setback issue. As we addressed before, I think there was a question of it's not a number of bedrooms, and that's correct. It's living space versus accessory space. So, for the purposes of the setback, it would be similar to an application to expand a kitchen, for instance, into the back setback, because it's living versus accessory. So that's really the variance. As far as the use goes, the applicant proposes a residential use and there have been accommodation requests made under federal law that accommodates that under the American Disabilities Act through the Fair Housing Act. That's a standard that we're looking at it from an administrative level but that, again, is not the application that's before you.

Mr. McCarty – I understand that. But I guess where I'm kind of stuck here is if we approve or deny a variance, and then this goes forward, is there another step here that I don't know about that then will approve the change in use and zoning that will be after a variance is approved or denied?

Ms. Muckala – There is no requirement for them to go to City Council for a special use or a zoning change of any sort, because the use proposed here based on the accommodation request is single family residential, the same as anyone else. The idea

behind this accommodation request under federal law is – and, again, the applicant can speak to this as well, but this is how it has been presented to City legal, that the accommodation allows persons, and in this case the applicant has proposed elderly individuals with disabilities, to live in larger groups so that they can be accommodated by assistive services that would allow them to live in the single family environment, the same as any other family. That's why it's not a use change. It's residential use, the same as any other family. The accommodations are being made to accommodate the disabilities.

Mr. Worster – But R-1 doesn't allow more than 3 unrelated people. We hear that all the time.

Ms. Muckala – That's correct. That is what the accommodation request was made to – to exceed the number of persons allowed under the definition of family. That is something that is found in federal law. The occupancy limit is a very common request to be made under these circumstances.

Mr. McCarty – Accessory structures, even if they have living in them, they can't have long-term living by City ordinance.

Mr. Seamans – They're going to connect it.

Mr. McCarty – I understand that. But as it is built, it has living in there. If it had a living space above it, it can't be long-term. Our ordinances don't allow accessory structures to have people live in them for longer than, I think, a month out of the year. There's some time limit in it. I don't remember exactly.

Ms. Muckala – You might be thinking of guest houses. Guest houses are only able to be used for – I forget the exact language, but it is limited amounts of times. It can't be permanent space.

Mr. McCarty – But it's an accessory structure as well because the setbacks in accessory structure for a guest house or a garage have the setback requirements.

Ms. Muckala – Right. The purpose of this application is actually to – if granted, what would happen is – to comply with the ordinance, they would be attaching that current garage space to the main dwelling, which would make it the main dwelling and, thus, it wouldn't be considered accessory any longer.

Mr. McCarty – Right. And I know that's what we're really discussing. I understand that.

2. Karleen Daugherty, 1220 Country Club Drive – I am a neighbor on the next street over in Country Club, and I built about 15 years ago. I just know from that building process that there was difficulty tying in to the water and sewer, and for 15 years I've had issues with the sewage issues, where I had a back-up once I had to address, and then periodically I've called the City and asked them to check the brush down the way so that way things don't get backed up. And this is brand new house, brand new plumbing, and so it's not a 1950s house that has been renovated once, never lived in, and then now is going to be used to house 10 seniors. So my question, also, is I didn't know senior citizens were a disabled class. I guess I would be considered that. But I have concerns about 10 people living there, and if there's also live-in staff, and then there's family members that are going to come and see these folks, what that traffic is going to look like. Because I know that the way that Country Club Estates is, it's like 3 little streets. I mean there's like not even any curbs on the streets and they're more narrow

than any other City suburban street. So the traffic is already bad. The roads have not been worked on in the 15 years I've been there, and I've known people in that neighborhood for close to 30 years and it's never been repaired. So if there's additional traffic for this business, then what that is going to look like. Those are my concerns, just the utility issues, the increased traffic on those 3 little streets that it's one way in and 3 ways out, only because you have to go back through those 3 little streets to get out to Robinson. So those are my concerns.

3. Reza Hajjari, 1201 Loma Drive – My property is adjacent to this property – we're sharing Loma Drive, so I'm exactly across the facility. I'm going to do my best not to be redundant, but I do echo the concern other people brought out. For my perspective, safety is going to be a huge issue because, frankly, if you physically go look at this property, Loma Drive is 17 feet wide. I have owned the property across Loma for 16 years and so far we have replaced our mailbox 3 times because the road is narrow. Garbage truck, when they come through and another car, everybody drive on the grass. So if you look at the photo that they have presented -- actually, if you go out there, it is really a lot worse than that. The building, of course – forgive me for again repeating myself, but first of all this construction been going on for I think 7-8 years and it was dormant for many years and it is an eyesore. I believe, I don't have details, but it's probably 200% expanded because it used to be a small house with two-car garage. From perspective, safety is going to be a huge issue for the residents because, if you look at the garage which right now is fenced in, the only way you could access is from Loma. And the way you have to back out – whether you go forward or you go backward, you have to come to Loma. There's not enough space, from my perspective, looking at it – you'd be parking partially on Loma. And also, frankly, if this proposal is approved, in my opinion, that's a bad example for Norman and this particular addition, because everybody is going to go expand their houses and then come ask for forgiveness. So I think it would be a bad decision, in my opinion. I really believe if that continues it's going to present potential liability and litigation in the future for the property owner and for the City of Norman.

DISCUSSION AND ACTION BY THE BOARD OF ADJUSTMENT:

Mr. Worster – I've gone back and forth on this one. In the time that I've sat here, I've gone back and forth on it. First of all, you've designed a very nice-looking project. It definitely looks a lot better from your renderings than what is there now, and I'm sure the neighbors would prefer it not to be a vacant building with windows falling out of it. So I appreciate your investment for sure. I asked originally about if this had ever been issued an occupancy permit and I'll explain myself now, I guess. It was never finished, someone else has taken up the project, and they're changing how that space will be used. It wouldn't have ever been permitted originally like this and it never received an occupancy permit from in between the current construction, so that's kind of a change order in my mind and it's a change order changing the use to an occupancy use from a non-occupancy use. That's how I feel about that part. Then I have to decide if that's still okay, and that's where I've run back and forth on it. Hopefully someone else will give me their thoughts on it as well.

Mr. McCarty – I have a lot of similar concerns. We have a structure that was built and bought as it is and now they want to change the use. I know it wasn't complete, but they're changing the use to benefit them in a residential neighborhood and I don't feel that this was the intent of what the previous owner was doing, or the intent of the neighbors and what they would expect to happen with the property. And with that said, I have a hard time with someone buying a piece of property and then coming and trying to get a variance for something they know was not the intent in a residential neighborhood, and I have a really hard time with that.

Mr. Howard – So you guys have probably heard me harp on corner lots before – they're despicable, because they create these quandaries with regard to setbacks and what's considered a side yard, what's considered rear yard, and so forth. As I'm looking at this, if this were a clean slate and the house were to front Loma, this would be a side yard condition and we wouldn't even be having this conversation.

Mr. Seamans – Regardless of whether it was a garage or living space, correct?

Mr. Howard – Correct. The other point as to change of use, I think federal law does trump here in this particular situation. If that's not the case, that can be litigated, I guess. But the other thing that I would point out is that there could be additional bedrooms added within that courtyard area if, for example, the applicant were to take down the garage, and it would still have the number of units, it would still have the same number of air conditioning units, it would still have a generator, it would still create the same amount of noise regardless of the size of the footprint or its encroachment on the current setback, as delineated by our ordinance. I think it's a sticky wicket. I still have not made up my mind at this point in time. I probably won't make up my mind until I actually speak.

Ms. Muckala – Again, just trying to clarify the status of how our ordinances are going to apply – codes are going to apply – just based on comments I've heard. First, with respect to whether or not there has been an occupancy permit issued, I just need to make it clear that the federal law that applies on the issue of an accommodation under the Americans with Disabilities Act does in no way exempt this property from building codes, occupancy codes. The federal law is very clear – all of those things will be applied to this property before any Certificate of Occupancy issues. So, to the extent it hasn't issued, it doesn't mean that there is any exemption. I want to make that clear for the record. And further on that, again, the federal law we're talking about here is on the issue of a use issue, so I don't see it actually applying to the decision that's going to be made here today in any way.

Mr. Reza Hajjari – One more thing. I didn't know that it's going to be assisted living space and so on. There are going to be a lot of noises regarding ambulances, Fire Department when someone goes sick and that happens often in assisted living facility. Thank you.

Mr. Zitzow – I think a lot of what has been raised in terms of concerns -- I think the City Attorney has addressed it – is outside of the purview in terms of the request that we're seeking today. The request is for a variance to the rear yard setback. I can point you back to the conditions – the four of them. We feel we've met those. To Commissioner Howard's point, this garage could very well be demoed and the same number of

bedrooms and all of the same conditions and applicable regulations for building code, fire code, parking regulations – they will all be met. We're not seeking variances from any codes or any regulations. It is just for that setback on the rear side. So we would ask for your approval and your support. Thank you.

Mr. McCarty – We did get some protests. What's our percentage of protests on this? Does anybody know.

Ms. Tromble – We don't do it for Board of Adjustment, because the only reason we do it for Planning Commission is because at City Council, if there's more than 50% protest, it triggers a super-majority. That doesn't apply here.

4. Dewight Deal – I live on Mountain Brook Drive. In regards to what's going on today, my protest was we had zero time as a neighborhood to discuss this. I got a letter in my mailbox about this meeting and that I had to write a letter of protest in 3 days. All of our other neighbors were gone on vacation or to Thanksgiving and this and that, and we haven't really been able to represent the neighborhood properly or the protests that need to be made. The rumors on this property and what it was going to be used for – there are more rumors than who is going to be the next coach at OU. We thought it was going to be a home for women that had a heroin addiction, and then we heard that it was going to be this. I'm concerned about the future of my property value for the future. If this is zoned as a single residence, what's it going to be in the future if this is okayed? Can it end up being a home for women that have a heroin addiction? Can it be old people that have schizophrenia? What's it going to be used for? As a neighbor, I want to know. I need more information to make an intelligent decision on whether or not they can attach a garage to a house. Thank you.

Mr. Zitzow – One last comment. We did meet the requirements for our notice. I believe there may be 3 – 5 people here. Doors were knocked. I fielded a phone call. Our clients have knocked doors. There were Facebook posts made about this and responses. But, in the end, we've met the minimum requirements for public notice. I do not feel that anyone has been infringed upon in terms of the lack of notice. Thank you.

Mr. Worster – If I can make one comment after that last one. Sir, I didn't catch your name, but I can tell you that protected classes do include people that are old or disabled or have a mental illness or a drug addiction. So there's nothing you can do as far as keeping – that won't matter. That's clearly illegal. But we're not talking about that today.

Mr. Schrank – Can I make one comment? I think, for me, it's like if this was a family who came and they have 10 kids and they need 10 bedrooms – that's how we have to look at this. Not as a nursing home or assisted living. This is a home. The applicants have come forward with a request to attach it, and does it meet the requirements to do so?

Curtis McCarty moved to approve the Variance as requested in BOA-2122-11. Patrick Schrank seconded the motion.

There being no further discussion, a vote was taken with the following result:

YEAS	Patrick Schrank, James Howard, Andrew Seamans
NAYS	Brad Worster, Curtis McCarty
ABSENT	None

The motion, to approve the Variance as requested, passed by a vote of 3-2.

Mr. Seamans noted the 10-day appeal period before the decision is considered final.

* * *

Item No. 9, being:

MISCELLANEOUS COMMENTS OF THE BOARD OF ADJUSTMENT AND STAFF

None

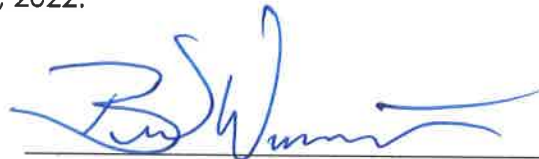
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Item No. 10, being:

ADJOURNMENT

There being no further business and no objection, the meeting adjourned at 6:03 p.m.

PASSED and ADOPTED this 26th day of January, 2022.



Board of Adjustment